

## MINUTES

### WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,  
Third Floor, Historic Court House,  
Boonville, IN

Monday, October 8, 2012, 6:00 PM

**PLEDGE OF ALLEGIANCE** – A moment of silence was held followed by the pledge of Allegiance.

**MEMBERS PRESENT:** Guy Gentry, President; Amanda Mosiman, Mike Moesner, Brad Overton, Jeff Valiant, Marlin Weisheit and Jeff Willis.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer and Tara Dickerson, staff.

**MEMBERS ABSENT:** None

**MINUTES:** Upon a motion made by Amanda Mosiman and seconded by Marlin Weisheit, the Minutes of the last regular meeting held September 10, 2012, were approved as circulated.

**APPOINTMENT TO THE BOARD OF ZONING APPEALS:** County Representative

Mrs. Rector stated that they need to make an appointment to the Board of Zoning Appeals/County Representative and the only members who qualify for that appointment are Mike Moesner and Jeff Willis.

Mike Moesner made a motion to appoint Jeff Willis as County Representative to the Board of Zoning Appeals. The motion was seconded by Marlin Weisheit and unanimously carried.

The President explained the Rules of Procedure to the audience.

**SUBDIVISION FOR PRIMARY PLAT APPROVAL:**

**PP-12-07 – Warrick Research and Industrial Center No. 7A by Maken Corp., Daniel Ubelhor, Pres. OWNERS: Elleclaire, LLC, Scott & Allison Elpers, Mbrs.; Ragle Limited Partnership, Samuel R. Ragel, Pres.; Ragle Limited Partnership II, Samuel R. Ragel, Pres. and Maken Corporation, Daniel Ubelhor, Pres.** 27.79 acres located on the N side of Vann Rd. approximately 2100' W of the intersection formed by Vann Rd. (S 350) & Prospect Dr.(S 325), being a replat of Lot 16B in Warrick Research & Industrial Center #2 Minor Subdivision of Lot 16 and a replat of part Lot 19 and all of Lot 20 in Warrick Research & Industrial Center #2 & part of the E ½ of the NE ¼ of Section 19, Township 6 South Range 8 West all in Ohio Twp. *Complete legal on file. Advertised in the Boonville Standard September 27, 2012.*

Danny Ubelhor and Jim Morley, Jr., Morley and Associates were present.

The President called for a staff report.

Mrs. Rector said they have submitted all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. She said this property is zoned M-2 General Commercial and there are no minimum lot requirements for that zoning. She added there is no flood plain on this property. She said this is a proposed three lot subdivision and it is a replat of three existing lots and adding additional acreage of unplatted sectional property to them. She said some of the property has been deeded off to the owners of the lots and this plat will incorporate all the parcels into recorded subdivision lots. She added that part of this property was approved in a primary plat (Warrick Research & Industrial Center #8) but that section has not yet been recorded. She said this is basically bringing the property into compliance. She said the County Commissioners ruled that no improvements would be required to Vann Road and the Drainage Board ruled no additional drainage plans would be required. She said Newburgh Sewer has submitted a letter saying they have capacity to service the subdivision and Indiana American has stated they have water lines in place. She said this is a three lot commercial subdivision and the plat is in technical conformity with the Subdivision Control Ordinance.

Jim Morley, Jr. said this is a relatively simple plat and they are bringing the deeded properties into compliance.

Ascertaining there were no questions from the Board and being no remonstrators present, the President called for a motion.

Mike Moesner made a motion to approve PP-12-7. The motion was seconded by Marlin Weisheit and unanimously carried.

#### **REZONING PETITION:**

**PC-R-12-14- Petition of Ciholas Properties, LLC, Mike Ciholas, Mbr. OWNER: Fredrick F. Martin and Frederick F. Martin Trust of 2004, Frederick F. Martin, Trustee** to rezone 17.4326 acres located on the E side of Bell Road approximately 1000' S of the intersection formed by Bell Rd. (W 850) & Vann Rd. (S 350), Ohio Twp. from "A" Agriculture to "C-4" General Commercial with a Use and Development Commitment. *Complete legal on file. Advertised in the Boonville Standard September 27, 2012.*

Mike Ciholas and Frederick Martin were present.

The President called for a staff report.

Mrs. Rector stated they still need the return receipt or unopened letters from Mansoor and Alifia Khan; all others have been submitted. She said this request is to rezone 17.4326 acres from "A" Agriculture to "C-4" General Commercial with a Use and Development Commitment. She said the Use and Development Commitment prohibits R-1 and R-2 dwellings; food locker and/or plants; sale and display of monuments; mortuary, undertaker, crematoria or embalming establishment and funeral home; pawn shop; self-storage warehouse facilities; sharpening and grinding shop; wholesale merchandise broker; wholesale and retail sales of bulk rock, sand and gravel; contractor equipment sales and service; freight or truck yard or terminal; welding supplies and equipment sales and service. She said other than that any other commercial use would be allowed because the "C-4" is the highest commercial zoning. She said there is no minimum requirement for this zoning and the Comprehensive Plan projects the area to be moderate to high density residential bordering commercial. She said the property is currently a vacant field. She said the property to north is part of the subject property and zoned Agriculture; across Vann Road is vacant

Agriculture and also “R-1A” Kingston Manor; east is “R-2B” – Springston Canterbury Green and SE corner is “C-4” Park Place Phase 1 Subdivision; south is Agriculture with residence and beyond that parcel is “C-4” High Pointe Center North Subdivision; west across Bell Road is “C-4”, “R-2B” (proposed Pebble Creek Subdivision) and a small parcel of Agriculture being a church. Mrs. Rector said this property was attempted to be rezoned to “C-4” in 2008 but they withdrew the application. She added earlier this year Bell Meadow Real Estate attempted to rezone the entire property to PUD/R-2B on one petition and then “R-1” (along Vann Road) and “C-2” (along Bell Road) on another petition; both were denied by the County Commissioners March 12, 2012. She said the Plan Commission recommended denial of the PUD petition and had no recommendation for the other. She said Mr. Martin owns over 35 acres and this rezoning is only taking 17.4 acres. She add they will need to do a subdivision to divide the property. She said a small portion of the property along Bell Road has some Zone A flood plain and if any buildings are to be located within that area they will need to determine the Base Flood Elevation and any permits will require a Certified Plot Plan for an Improvement Location Permit. She said most of the property does not lie in the flood plain and any buildings on that portion will not require any certified plot plan. She added they have frontage on Bell Road and they will have to file a commercial driveway and/or street plans with the subdivision. She said the stated use is a commercial development which is allowed in this zoning.

Mr. Ciholas said there is a little bit of insanity with the flood plain; the small amount of it that does touch the property is of no consequence to their plans and it is also unreasonable to think it would ever be flooded since it is seven to eight feet higher than portions across the street that are not in the flood plain. He thanked everyone for coming to hear this, especially Mrs. Rector and her staff; they have been very helpful to him as well as the County officials. He said the reason they are seeking this land is they are trying to locate his company here and they have been unable to find reasonable land and/or buildings to renovate to suit their company’s needs. He said they have chosen Warrick County because it is business friendly and ease of use. He said they are familiar with this land and its rezoning difficulties in the past and they have tried to design their use for this land to be as low impact to the neighborhood as possible. He said with the rezoning attempt that was tried earlier this year, the major complaint was having high density residential and the traffic and other problems it would cause. He said their use is really low impact and it is only during normal business hours and it will cause very low traffic. He said they are not a retail business that generates traffic to and from them – it is basically an engineering office. He said his company does electronic research and development for other companies. He said in the application they showed a proposed building in the middle of this property and leaving a good portion of the property undeveloped and leaving as much as possible of the existing trees to provide visual and environmental barriers to the neighbors.

Guy Gentry asked how many employees he will have starting out.

Mr. Ciholas said they currently have about 28 employees and the building is sized to house approximately 100. He said he doesn’t know if they will ever get that size; there is some natural size to his business and he thinks it is somewhere north of 50 and maybe not quite 100.

Guy Gentry asked if most of it will be engineering and computer type work.

Mr. Ciholas said 80% of his employees are college graduate level engineers and the remainder is mostly college graduate administrative staff. He said they have a few general laborers.

Mrs. Rector asked if he plans on leaving the natural tree line between this property and the subdivision.

Mr. Ciholas said yes, the topography of the land is such that when you get to the eastern border there is a fairly significant elevation rise that makes it basically unbuildable property and it is covered mostly with trees and so he sees no problem with leaving the east 75-100 feet of trees to grow on the hillside. He said he can't really use that property anyway because it would take too much effort. He said the property to the south has plenty of trees on it; they are not on his property but they still take benefit of having them there.

Mrs. Rector explained to the Board that he isn't held to this plot plan; there won't be retention inside the Marathon easement. She said he is giving them an idea of what he is proposing.

Mr. Ciholas said he did meet with the Army Corps of Engineers and discussed the ditch that bi-sects the land. He said he indicated that there would be no problems with the plan as shown; that it would be reasonable for them to get a permit for them to cross the ditch and a permit to drain the retention into the ditch. He said they also indicated there were no wetlands on the property but they did indicate they should check with various authorities about endangered species and they will do that.

Mr. Ciholas said he personally considers the rezoning of this project the highest risk part of the project and so they are trying to do that first. He said if that doesn't work then they will move on and try to find another site. He said if the zoning works out then they will start doing more heavy due diligence.

Guy Gentry asked if they plan on doing a culvert or a bridge.

Mr. Ciholas said that is to be determined. He said the plans in the application are something he drew up and he is not a civil engineer-it is just a notional view. He said the building depicted in the drawing is very similar to a building they attempted to put in place somewhere else.

Ascertaining there were no other questions from the Board, the President called for remonstrators.

Tod Bischoff, 8165 Covington Court, said the neighbors got together and did their due diligence on Mr. Ciholas and his company and they were very impressed with them. He said this is the type of company that needs to come into Warrick County and he wants to make a statement that none of the neighbors are opposed to this; in fact they are very much in favor of it. He said they look forward to a positive answer from the Board.

Larry Manley said he owns the property to south and they have been there since 1942. He said he has nothing to say against this but he does want to ask a couple of questions about pollution, if there is any. He said they would just like to know what is coming. He said their concerns are about things like noise, smell and smoke. He said the property on the west side of that ditch is low and when they have heavy rains, water accumulates in that field. He said years ago it used to run right across where his Mom lives but through the years they have built up four concrete blocks of dirt to hold the flooding back and in recent years either the ditches are much better or they don't get the rains like they used to because they haven't been getting that kind of flooding. He said the water still accumulates in that field in a heavy rain and he wonders what they have planned for that area next to his Mom's house. He said he also wants to know if they will be working at night.

Mr. Ciholas said first, in dealing with the drainage issues, any improvements to the property will have to be approved by the Drainage Board and an appropriate amount of civil engineering will have to be done to make sure the water they collect and discharge is handled properly. He said there is a ditch that goes through the land and through the neighbors and ends up in the legal drain out by Wal-Mart. He said as part of the drainage requirements, he is required to retain water for a 50 year event and discharge it at a 5

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year event so when they do the drainage they actually improve it for anybody downstream. He said they take more water in than would naturally come off at that time. He said Mr. Manley is correct in that the western portion of the property is the lowest part of the land and there is a portion of it that does get wet. He said if the western portion of the ground gets developed, it would also have to be approved by the Drainage Board and handled the same way. He said he is open to discussing with the neighbors to see what kind of problems they have and what he can do to help them out with their problems. He said in discussing the ditch with Army Corps of Engineers, they gave him outlines of what he can and cannot do with the ditch and there are some things he can do such as removal of some of the vegetation and cleaning out some of the sediment and that will improve some of the flow and help prevent the backups.

Mr. Ciholas said as for pollution, they are an office building and they don't have second and third shifts. He said they don't have heavy machinery and from the outside they will just see a building sitting there. He said there are no emissions and there is a concerted effort in the design of the building to reduce the amount of energy they use and that includes the electricity for heating, cooling and lighting. He said they are looking at minimal outdoor light that have down patterns to keep the light from going around to the neighbors because he doesn't want to spend the kilowatts to run them and they don't want the lights in their house. He said they are taking a very energy efficient tact on this; geo-thermal heating and cooling and well insulated. He said it is probable this building will use less energy than his current building, even though it is three times the size. He said that is a general pollution that affects the whole region. He said they don't have a lot of evening or weekend traffic. He said occasionally someone may work late on a project but it would be hard for them to notice that occurring. He said they may be one or two engineers working on a project in their office but that should cause no impact to the neighbors.

Guy Gentry asked about deliveries and when they would come.

Mr. Ciholas said they will generally all be during the day and the rate of delivery is very low. He said it may get a delivery once every 2-3 weeks. He said a restaurant gets a delivery every 2-3 days and it would be difficult to count how many deliveries they get because there is some much time between them. He said he thinks in all of last year they had less than 30 deliveries.

Guy Gentry said he knows most of their work is prototype and they will be assembling some of them. He asked if there is noise involved in that and will the building be insulated to retain it.

Mr. Ciholas said there is no outdoor work in the sense there is no outdoor shop or something like that. He said it is all inside the building. He said they do have what they call a prototype assembly area but it is taking circuit boards and putting them in boxes and screwing them together. He said there are no punches or presses or things like that. He said they will probably have a small machine shop for prototype work but again it is an intermittent work for engineering samples not something that is punching things out 24/7.

Guy Gentry said he is not showing any development for the front part of the property.

Mr. Ciholas said they have no plans to develop either the east 1/3 or the west 1/3 of the property. He said they have no need to be visible to the road and so they put the building in the middle 1/3 of the property. He said in 5, 10, 15 years from now there may be future development; he isn't sure that will ever happen.

Ascertaining there were no other questions from the Board and being no other remonstrators present, the President called for a motion.

Jeff Valiant made a motion based on the evidence presented and petition on file to recommend approval to the County Commissioners of PC-R-12-14. The motion was seconded by Amanda Mosiman.

Brad Overton said he has one question with this zoning would there be the possibility of a restaurant or even a gas station along Bell Road.

Mrs. Rector said it could with that zoning but before he could build more than one building he would have to do a subdivision plat and everyone would be noticed of the division of the property. She said if they meet the subdivision requirements there is no denying a subdivision if it meets the ordinance. She said, yes, it could be those uses if they do a subdivision in the future.

Brad Overton said for the most part he believes this business will be very minimal and a low impact and fit well with all the other development there but his big concern is if something does come along Vann Road like another Acapulco and the amount of traffic that would bring and it would be the same off Bell Road. He said both of those roads have lots of traffic now and there are a lot of subdivisions that abut Vann Road.

Marlin Weisheit said Mr. Ciholas's property doesn't touch Vann Road, he just touches Bell Road.

Discussion ensued over the location of the proposed zoning and the surrounding zoning.

The President called for a vote. The motion carried unanimously. The President stated this petition will be forwarded to the County Commissioners with a recommendation of approval on Tuesday, November 13, 2012, at 4:00 p.m. in the Commissioners Meeting Room. He explained it is Tuesday because that Monday is Veteran's Day.

#### **OTHER BUSINESS:**

**Formal Complaint** ~ Frank Schnell dba FIT Tire Recycling, OWNER OF RECORD: J.H. Service Co., Inc., by Ronald Witt, Sr., Pres. ~ Tire storage ~ Progress Report.

Mrs. Rector said they should have a copy of the report in their packets. She said the report indicates they took in 588 tires and sent out 2,949 tires.

#### **ATTORNEY BUSINESS:**

None.

#### **EXECUTIVE DIRECTOR BUSINESS:**

Mrs. Rector said they had a formal complaint filed on a piece of property and she sent a letter to the deeded owner. She said the letter came back saying it was undeliverable and she did not leave a forwarding address. She said the complaint was against someone other than the owner and they say he has a trash hauling business. She said the man living there and the woman don't have the same last name and over the weekend, staff spoke to the person who filed the complaint who told them the man is the father of the woman's children and the woman just up and left the property. She said her question is what they do now. She said normally it is the person who owns the property and they don't know how to find her. She said they have this man who has signs up on the property and is clearly running a trash hauling

business at his house. She said the complainant also told staff the rodents are as big as cats on the property.

Mrs. Rector said it is the advice of Attorney Doll that she brings this up to the Board. She said he suggested they send a letter to the man and see if he responds. She said he also suggested they could place a notice in the newspaper and then they could proceed to court by that notice. She asked Attorney Doll to explain about his cease and desist suggestion.

Attorney Doll said he suggested two or three things but he thinks the Board should consider giving Mrs. Rector the authority to write a cease and desist notice letter. He said when they receive a complaint and she investigates it and there is photographic evidence or other evidence that indicates a violation is occurring then she, as the Director of the Area Plan Commission, should have the authority to be able to write a cease and desist letter to the operator and or/the land owner, who in this case are different people. He said she should also be able to incorporate a request they appear before the Board to address their violation and a remedy for the situation. He said they don't have anything right now in the rules that authorizes a cease and desist order. Attorney Doll said he thinks it should be in the Rules of Procedure; it could be in the ordinance if the Commissioners want to amend it but he thinks it could be in the rules that would give her the authority to do that and he would recommend it. He said it would expedite the process. He said secondly they could also put in the rules that she could give such notice in two different ways; send a certified letter (and regular) by US Mail but in those circumstances where it doesn't work she could also serve that notice by publication. He said that is not the same publication he would have to use if they instructed him to bring an action for violation in the courts. He said he would have to use the summons by publication of Trial Rule 34. He said this gives them more tools to try to solve problems up front versus waiting to get to court. He said he would encourage them to amend the rules in both ways.

Mrs. Rector asked what the official notice should say; you are in violation and must appear before the Board at this time...

Attorney Doll said plus the cease and desist part would be that you should immediately cease and desist this ongoing activity as it is a violation and then you need to appear in front of the Board to discuss remedies to correct this violation. He said a lot of counties use the cease and desist; a lot of metropolitan counties give a cease and desist authority to their inspectors and they can actually write one up in their car at the site when they see a violation. He said he isn't suggesting that but he thinks at least Mrs. Rector should have the authority to write a cease and desist when she has photographic evidence that shows a violation is occurring such as operating a junk yard in an area that isn't zoned for that. Attorney Doll said what they are trying to do is stop the problem now versus a month from now when the person shows up for the first time and say they didn't know.

Mike Moesner said with a cease and desist order what transpires if they don't cease.

Attorney Doll said it is up to the Board at that time. He said they could decide to give more time to remedy the problem (like FIT Tire) or they can instruct him to file a violation of the ordinance in the court. He said Mrs. Rector's cease and desist letter will help him if he does file a case in the court because it shows the judge they have attempted to exhaust all of their administrative remedies to fix the problem.

He said it doesn't take any tools or discretion away as to how to work with someone when they show up and say they stopped when they got the letter but they need time to fix the problem.

Guy Gentry asked if when she sends the letter if it is determined they are in violation can there be a daily charge for that.

Attorney Doll said they can't do that.

Guy Gentry asked even if by ordinance; they can redo their ordinance do that.

Attorney Doll said there has to be a due process authority where they have to appear and be given an opportunity to refute it. He said he is talking about an administrative penalty; the State does allow that but it is generally reserved for State agencies like IDEM or INDOT. He said in all candor he doesn't recommend they do that; they would have a lot of questions raised by the courts as to what due process they were afforded and whether they had a right to appear or a right to appeal and what was the basis for the assessment of the penalty. He said he has found no hesitation from a judge in Warrick County, when they are shown clear evidence, for them to assess a fine but that clearly meets due process; they have an independent arbiter who is making the determination. He said the Board would be both prosecutor and judge if they assess a fine.

Mrs. Rector said so basically her letter is going to be the same except it is going to say they must cease and desist immediately and then appear before the Board on a certain date.

Attorney Doll said that is correct but he would like for the rules to authorize it.

Mrs. Rector said she can amend the rules and have them back at the next meeting.

Attorney Doll said if that is the Board's wishes.

Mike Moesner said he would move for Mrs. Rector to do that. Brad Overton seconded.

Mrs. Rector asked if they are instructing her to write the letter now and then bring the Rules of Procedure back to them next month.

Attorney Doll said they can pass a resolution tonight instructing her to write a cease and desist letter while she is working on the Rules of Procedure if that is what they want. He said that would be specific to this case and he doesn't know if there is enough evidence in front of them for this case.

Mrs. Rector said she can show the pictures and she passed out the photographs of the property. She said it is her understanding he collects trash and brings it to this property and dumps it instead of taking it to the landfill.

Discussion ensued over the photographs.

Marlin Weisheit said this definitely needs to have some attention.

Mike Moesner withdrew his motion and Brad Overton withdrew his second.



Mike Moesner said she has definite pictures showing the problem and made a motion to have her write the cease and desist letter immediately and work on amending the Rules of Procedure. Brad Overton seconded the motion and it unanimously carried.

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Mrs. Rector said Don Adams has withdrawn his rezoning petition for Gotham Recovery. She said she sent him an email and told him that he could not have his wreckers or business there and the Zoning Inspector went to the property and there are four cars in his back yard.

Marlin Weisheit said he bets him and the neighbors has come to an understanding.

Mrs. Rector said they have contacted the neighbors who indicated they have not seen any activity on the property. She said she is sure they will let them know if it starts back up.

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Marlin Weisheit asked about the Rainey property/complaint.

Attorney Doll said he will have to check with the court again. He said this case has been continued twice, once was his fault but the last time they did not receive service on Mr. Rainey. He said he will be checking with the court but the hearing is set for Friday.

Mrs. Rector said if they don't take the notice then he is going to put one in the paper, correct.

Attorney Doll said that is an example of the Rule 34; he can use a summons process by publishing it in the newspaper.

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Mrs. Rector said they all got copies of the emails sent out about the burned out house in Fall Creek. She said Attorney Doll is trying to get in contact with their attorney.

Amanda Mosiman said she read all of the emails and so they are saying they can't do anything with it.

Mrs. Rector said they have issued a permit for them to build a new house.

Attorney Doll said there is a debate as to whether it is to build a new house, but there is a permit and they have six months to use the permit. He said the argument is what is salvageable and if the foundation is salvageable that is one thing but it could really be a hodgepodge if they try saving walls. He said somewhat their hands are tied until they see what they are doing with the permit but in the meanwhile he is trying to prod them along into making some progress one way or the other.

Amanda Mosiman said the neighbors still think they can do something.

Mrs. Rector said she keeps telling them they can't. She said she thinks they have done all they can do and they can't treat people differently. She said she thinks there is a lot of suspecting activities there but they

aren't the court and there is no proof. She said if her house burned down it would take time for her to get the insurance settled. She said they have to look at it both ways.

Being no further business the meeting adjourned at 6:30 pm.

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Guy Gentry, President

ATTEST:

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Sherri Rector, Executive Director